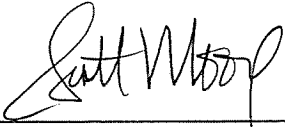


<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  <b>9400-62 (030408)</b>						
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 5px;">Application Number  <b>10/756,790</b></td><td style="width: 50%; padding: 5px;">Filed  <b>January 13, 2004</b></td></tr><tr><td colspan="2" style="padding: 5px;">First Named Inventor  <b>Thomas Arnold Anshutz</b></td></tr><tr><td style="padding: 5px;">Art Unit  <b>2157</b></td><td style="padding: 5px;">Examiner  <b>Uzma Alam</b></td></tr></table>		Application Number  <b>10/756,790</b>	Filed  <b>January 13, 2004</b>	First Named Inventor  <b>Thomas Arnold Anshutz</b>		Art Unit  <b>2157</b>	Examiner  <b>Uzma Alam</b>
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Art Unit  <b>2157</b>	Examiner  <b>Uzma Alam</b>							
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"><div style="width: 45%;"><p>I am the</p><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input type="checkbox"/> attorney or agent of record. Registration number _____</p><p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <b>42,011</b></p></div><div style="width: 50%; text-align: center;"> _____ Signature  <b>D. Scott Moore</b> _____ Typed or printed name  <b>(919) 854-1400</b> _____ Telephone number  <b>February 26, 2008</b> _____ Date</div></div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>								
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>								

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

**RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE EXAMINING GROUP 2157**

Attorney Docket No. 9400-62 (030408)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Thomas Arnold Anschutz, et al.

Confirmation No.: 2954

Application No.: 10/756,790

Group Art Unit: 2157

Filed: January 13, 2004

Examiner: Uzma Alam

For: *Methods, Systems, and Computer Program Products for Modifying Bandwidth and/or  
Quality of Service for a User Session in a Network*

February 26, 2008

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL  
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed November 27, 2007 (hereinafter "Final Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Applicants respectfully submit that the rejections of the currently pending claims are clearly erroneous because many of the recitations of the pending claims are not met by the cited references for at least the reasons discussed herein and in Applicants' previously filed Amendment dated September 18, 2007. Therefore, Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the

interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the recitations of independent Claims 1, 19, 37, and 55.

**Independent Claims 1, 19, 37, and 55 are Patentable**

Independent Claims 1, 19, 37, and 55 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U. S. Patent No. 6,901,446 to Chellis et al. (hereinafter "Chellis"). (Final Action, page 2). Independent Claim 1 is directed to a method of modifying at least one of bandwidth and Quality of Service (QoS) for a user session in a network and recites, in part:

receiving a request at at least one of the NSP and the ASP to change at least one of bandwidth and QoS associated with the user's session; and  
using Application Programming Interface (API) calls at at least one of the NSP and the ASP to communicate with the RAN to modify the at least one of bandwidth and QoS associated with the user's session.

Claims 19, 37, and 55 include similar recitations. According to the independent claims, the Network Service Provider (NSP), Application Service Provider (ASP), or both receive a request to change bandwidth, QoS, or both for a user's session. API calls or messaging interface calls are used to communicate with a Regional Access Network (RAN) to make the requested modification.

As a preliminary point, Applicants note that Chellis relates to automatically allocating resources in response to a request. (Chellis, Abstract; col. 4, lines 28 - 33). Chellis does not appear to disclose receiving a request to change bandwidth or QoS for an existing user session and making the requested modification as recited in the independent claims. Instead, Chellis appears to be directed to allocating resources through a provisioning process, *i.e.*, to establish initial service for a requesting group, such as a consumer group. (Chellis, col. 15, line 35 - col. 16, line 23; FIG. 10).

Next, the independent claims recite the use of API calls (Claims 1, 19, and 37) or messaging interface calls (Claim 55) at an NSP and/or ASP to communicate with a RAN to modify bandwidth and/or QoS for a user session. The Office Action cites the Abstract in

Chellis as disclosing use of API calls as recited in Claims 1, 19, and 37. (Final Action, page 3). Applicants respectfully disagree. Chellis' Abstract states: "...the system includes an Application Programming Interface (API) operable to configure and/or control the one or more components for automatically allocating one or more resources." Thus, Chellis' API is used to configure components for the automatic allocation of resources. These "components" appear to be the resource request manager 40 and the resource allocator 30 shown in FIG. 2 of Chellis, which are not described in Chellis as being part of a RAN. The Abstract is the only reference to an API in Chellis. Therefore, Chellis does not disclose using an API to communicate with a RAN, *i.e.*, a network to modify bandwidth and/or QoS for a user session.

With respect to independent Claim 55, the Final Action cites the Abstract in Chellis as disclosing the use of messaging interface calls. (Final Action, page 8). Applicants submit that, for at least the same reasons discussed above with respect to the use of API calls in Claims 1, 19, and 37, Chellis does not disclose using messaging interface calls to communicate with a RAN to modify bandwidth and/or QoS for a user session.

Independent Claims 1, 19, 37, and 55 further recite that communication is made with a RAN to modify the bandwidth or QoS associated with a user session. In sharp contrast, Chellis discloses in FIG. 10 a resource management service 220, provisioning framework 240, data center operations 250, and feedback analysis function 260 that are used for allocating resources. (Chellis, col. 15, lines 35 - 55). Chellis does not appear to disclose, however, that any of these modules/functions are part of an NSP and/or ASP.

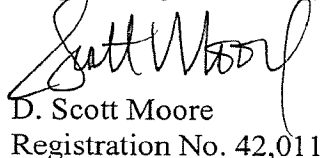
In the "Response to Arguments" section, the Final Action states with respect to Applicants' argument that Chellis does not appear to disclose receiving a request to change bandwidth or QoS for an existing user session and making the requested modification the claims do not recite an existing user session. (Final Action, page 9). Applicants respectfully disagree. Claim 1, for example, is directed to "[a] method of modifying at least one of bandwidth and Quality of Service (QoS) for a user session in a network..." Claim 1 further recites "receiving a request...to change at least one of bandwidth and QoS associated with the user's session..." and "using Application Programming Interface (API) calls...to communicate with the RAN to modify the at least one of bandwidth and QoS associated with the user's session." Thus, the claim language clearly implies an existing user session as the

user session must first exist before it can be modified or changed.

In response to Applicants' argument that Chellis does not disclose using an API to communicate with a RAN, *i.e.*, a network to modify bandwidth and/or QoS for a user session, the Final Action cites col. 8, lines 51 – 67, col. 19, lines 1 – 15, and the Abstract of Chellis as teaching an API that configures or controls components for automatically allocating one or more resources. (Final Action, page 9). Applicants have acknowledged that Chellis discloses an API to configure components for the automatic allocation of resources. Applicants submit, however, that the "components," which the API is used to configure appear to be a resource request manager 40 and a resource request allocator 30, which are shown in FIG. 2 of Chellis and described in col. 8, line 28 – col. 9, line 15 and col. 10, lines 1 – 9 of Chellis. Applicants submit that the resource request manager 40 and the resource request allocator 30 are not described as being part of a Regional Access Network (RAN) as recited in the pending independent claims. Accordingly, Applicants maintain that Chellis does not disclose or suggest using an API to communicate with a RAN to modify bandwidth and/or QoS for a user session.

For at least the foregoing reasons, Applicants respectfully requests that the present application be reviewed and that the rejection of independent Claims 1, 19, 37, and 55 be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,

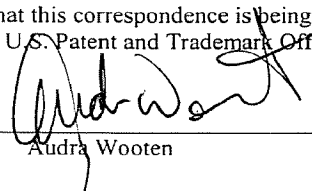
  
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**CERTIFICATION OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on July 23, 2007.

Signature: \_\_\_\_\_

  
Audra Wooten